

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
EASTERN DISTRICT OF TENNESSEE**

In re

Case No. 99-32996

PAMELA KAY WOODWARD
a/k/a PAMELA KAY REED

Debtor

PUBLISHED:

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DISTRICT COURT No.:

DISPOSITION:

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EASTERN DISTRICT OF TENNESSEE**

In re

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PAMELA KAY WOODWARD
a/k/a PAMELA KAY REED

Debtor

**MEMORANDUM ON H. DOUGLAS NICHOL'S
MOTION TO RECONSIDER DENIAL OF
REQUEST FOR REIMBURSEMENT OF EXPENSES**

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

Before the court is the Applicant's Motion to Reconsider Denial of Request for Reimbursement of Expenses (Motion to Reconsider) filed by H. Douglas Nichol on August 4, 2003, in which Mr. Nichol asks the court to reconsider its July 25, 2003 Order denying his request for reimbursement of expenses in the amount of \$1,169.89. Pursuant to Federal Rule of Civil Procedure 59(e), applicable to this proceeding through Federal Rule of Bankruptcy Procedure 9023, the court will treat Mr. Nichol's Motion to Reconsider as a motion to alter or amend the July 25, 2003 Order.

I

The Debtor filed her Chapter 7 bankruptcy case on July 22, 1999. Mr. Nichol represented the Debtor and her former husband in a state court lawsuit commenced prior to her bankruptcy filing. The state court lawsuit was ultimately settled, and on June 23, 2003, Mr. Nichol filed an Application for Compensation, requesting compensation of his one-third contingency fee in the amount of \$3,333.33 and reimbursement of expenses in the amount of \$1,169.89. After a hearing on July 10, 2003, the court entered an Order on July 25, 2003, granting Mr. Nichol's request for compensation pursuant to his one-third contingency fee with the Debtor as per his employment by the Trustee under 11 U.S.C.A. § 328(a) (West 1993), but denying Mr. Nichol's request for reimbursement of expenses in the amount of \$1,169.89 for failure to comply with Federal Rule of Bankruptcy Procedure 2016(a).¹

¹ As required by Rule 52(a) of the Federal Rules of Civil Procedure, incorporated into this contested matter by Rules 9014 and 7052 of the Federal Rules of Bankruptcy Procedure, the Order was accompanied by a Memorandum on Allowance of Compensation and Reimbursement of Expenses of H. Douglas Nichol.

II

The court denied Mr. Nichol's request for reimbursement of expenses for failure to comply with Federal Rule of Bankruptcy Procedure 2016(a), which requires that any party seeking reimbursement of expenses from a debtor's bankruptcy estate must include with an application for compensation "a detailed statement of (1) the services rendered, time expended and expenses incurred[.]" FED. R. BANKR. P. 2016(a). Mr. Nichol asks the court to amend its July 25, 2003 Order and grant his request for reimbursement of expenses, stating that he had "prior to the fee application, provided [the Chapter 7 Trustee] with a copy of the . . . expense breakdown and was advised that this was a satisfactory explanation." Mr. Nichol asserts that "[t]he failure to attach this documentation to the fee application was merely an oversight on the part of [his] counsel." In order to cure the deficiency of his Application for Compensation, Mr. Nichol attached to his Motion to Reconsider the Final Settlement from the state court lawsuit, itemizing the total expenses incurred, to which 10% would be pro-rated to the Debtor.

Consideration of a motion under Rule 59(e) does not allow the party to reargue his case. *In re No-Am Corp.*, 223 B.R. 512, 514 (Bankr. W.D. Mich. 1998). Instead, "[m]otions to alter or amend judgment may be granted if there is a clear error of law, newly discovered evidence, an intervening change in controlling law, or to prevent manifest injustice." *Gencorp, Inc. v. Am. Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1998) (internal citations omitted). In this case, none of these reasons are present. Mr. Nichol failed to comply with the procedures set forth by Rule 2016(a), requiring an itemization of the expenses requested. The court's denial of his requested expenses for noncompliance is not a clear error of law. Nor are there any intervening

changes in bankruptcy law whereby the court would be compelled to amend its July 25, 2003 Order.

Moreover, Mr. Nichol does not present any newly discovered evidence. In the context of Rule 59(e), "the failure to file documents in an original motion or opposition does not turn the late filed documents into 'newly discovered evidence.'" *Sch. Dist. No. 1J, Multnomah County, Or. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). Instead, newly discovered evidence must have previously been unavailable. *Gencorp, Inc.*, 178 F.3d at 834. Clearly, the Final Settlement now attached to Mr. Nichol's Motion to Reconsider was available at the time that he filed his Application for Compensation.

Additionally, there is no manifest injustice to be avoided. Manifest injustice is defined as "[a]n error in the trial court that is direct, obvious, and observable, such as a defendant's guilty plea that is involuntary or that is based on a plea agreement that the prosecution rescinds." BLACK'S LAW DICTIONARY 974 (7th ed. 1999). Mr. Nichol did not comply with the requirements of Rule 2016(a) by failing to attach a detailed statement of the expenses requested to his Application for Compensation. Based upon this noncompliance, the court denied his request. Case law supports the court's determination. The court's decision directly stems from Mr. Nichol's "failure" and "oversight" and does not constitute a manifest injustice.

III

The court has reviewed Mr. Nichol's Motion to Reconsider and has determined that he cannot now cure the Rule 2016(a) deficiency of his Application for Compensation filed on June 23,

2003. Because Mr. Nichol has not satisfied any of the bases by which a motion pursuant to Rule 59(e) should be granted, the Applicant's Motion to Reconsider Denial of Request for Reimbursement of Expenses shall be denied.

An order consistent with this Memorandum will be entered.

FILED: August 15, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

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ORDER

For the reasons stated in the Memorandum on H. Douglas Nichol's Motion to Reconsider Denial of Request for Reimbursement of Expenses filed this date, the court directs that the Applicant's Motion to Reconsider Denial of Request for Reimbursement of Expenses filed by H. Douglas Nichol on August 4, 2003, is DENIED.

SO ORDERED.

ENTER: August 15, 2003

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE